

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 10980 of 2006
 With
CIVIL APPLICATION No. 7380 of 2006
 with
CIVIL APPLICATION No.6850 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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RADHAKRISHNA GAU SEVA TRUST - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

SPECIAL CIVIL APPLICATION No.10980 of 2006

MR HJ NANAVATI for Petitioner(s) : 1,
 MR SIRAJ GORI AGP for Respondent(s) : 1-2,
 MR AR THACKER for Respondent(s) : 3,

CIVIL APPLICATION No. 7380 of 2006

MS ROOPAL R PATEL for Applicant(s)

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 26/07/2006

ORAL JUDGMENT

1. Civil Application No.7380/06 has been filed by the applicant which is a Public Charitable Trust. The opponent no.1 of the Civil Application i.e. the petitioner of the main petition is stated to be a trust affiliated with the applicant trust. The opponent no.1 of the applicant i.e. the petitioner runs a B.Ed college in Surrendranagar district. The main petition pertains to the action of the Saurashtra University in not allotting students for admission to the B.Ed courses in the petitioner college. The applicant of Civil Application seeks permission to join itself as party respondent. The applicant claims interest in opposing the petition.

2. Having heard learned advocate Ms. Patel for the applicant and learned advocate Shri Nanavati for the opponent no.1, I do not find that the applicant herein is either a necessary or proper party. Admittedly, the issues arising in the main petition are with respect to the action of the University regarding non-allotment of the students to the petitioner college. The applicant of the Civil Application has no role to play in the said

litigation. Though the applicant has sought to bring on record certain material to suggest that the petition should not be entertained, I do not see how the applicant could be permitted to participate in the said litigation. The petition has to be decided on the basis of available material on record produced by the Saurashtra University who is the author of the action taken against the petitioner. In view of this discussion the application is rejected. Learned advocate for the applicant however submitted that the applicant has already brought to the notice of National Council for Teachers Education (NCTE for short) certain irregularities committed by the petitioner in running the B.Ed college. I express no opinion on such an attempt on part of the applicant and it will be open for the NCTE to examine the same in accordance with law.

3. In the main petition, the petitioner has challenged the action of the respondent no.3 University in not allotting students for the B.Ed college run by the petitioner.

4. Short facts leading to the present petition are that the petitioner trust intended to start a B.Ed college in Surrendranagar district as per the provisions of National Council for Teachers Education Act, 1993 (herein after referred to as the said Act). The petitioner, therefore, applied for recognition to the NCTE. It is the case of the petitioner that the NCTE having verified the fact that the petitioner fulfills all the necessary requirements for starting a training institution by its communication dated 7th July, 2003 granted recognition with intake capacity of 100 students for B.Ed courses starting with the academic session of 2003-2004. The petitioner has produced an order dated 17th March, 2004 passed by the NCTE which states inter alia that NCTE in exercise of powers u/s 14(3)(a) of the said Act has granted recognition to the petitioner trust for running the B.Ed institution with only intake capacity of 100 students subject to the conditions provided therein. Condition no.4 of the said order provided that recognition is subject to the condition that the affiliating University shall ensure that among other things, the institution has appointed required number

of faculty members as per the norms of NCTE/State Government. Condition no.7 of the said order provides that if the institution contravenes in all the above conditions or in all the provisions of NCTE Act, Rules, Regulations and Orders thereunder, the Regional Committee may withdraw the recognition under the provisions of Section 17(1) of the said Act.

4.1. The case of the petitioner further is that pursuant to the said recognition granted by NCTE the petitioner also received affiliation with respondent no.3-Saurashtra University for the academic year 2004-2005. The B.Ed college was also allotted students by respondent no.3 University for the academic years 2004-2005 and 2005-2006.

4.2. The present problem of the petitioner arose when the new academic term approached. It is the case of the petitioner that with malafide intention and at the behest of disgruntled elements the respondent no.3 initiated steps to prevent allotment of students to the petitioner. It is the case of the petitioner that some persons with whom the trustees

of the petitioner trust are involved in legal battles, through respondent no.3 University wish to ensure that the petitioner does not get allotment of students for the current academic term. The petitioner, therefore, approached the University and represented its case in this regard. A communication dated 27th April, 2006 was issued by the Registrar of respondent no.3 University to the petitioner trust in which it is stated that pursuant to certain complaints of irregularities being committed in the college of the petitioner trust the Vice Chancellor has set up a committee of three members for inquiring into such allegations. Until report of this committee is received, instructions have been received not to make allotment of students for the academic year 2006-2007. The petitioner, therefore, made a representation to the respondent no.3 University on 16/5/2006 denying any irregularities in the college and requested that the allotment of students may not be stopped since the counselling is already going on, sufficient number of students be allotted to the college of the petitioner trust.

4.3. Despite the said representation since the petitioner did not receive any allotment the petitioner was compelled to file this petition.

4.4. The case of the respondent no.3 University as emerging from the affidavit in reply and the documents produced on record is that there were certain allegations of irregularities in running of the college by the petitioner trust. A report was, therefore, made by a committee comprising of two members. This report is dated 11/2/2006 and copy thereof is produced on record. On the basis of this report the University found that allotment of students cannot be made. During the course of oral submission learned advocate Shri Thacker for respondent no.3 University placed on record a copy of the further report dated 5/7/2006 submitted by one Dr.Bharat Ramanuj and Dr.H.O.Joshi pointing out certain irregularities of running of the college.

4.5. Broadly stated, therefore, the defence of the respondent no.3 University is that the petitioner has committed irregularities in running of the B.Ed

college and the respondent no.3 University, therefore, did not find it appropriate to make allotment of any students for the current academic year.

4.6. The State Government has not filed any affidavit in reply merely leaving for the University to defend the issues.

4.7. Learned advocate Shri H.J.Nanavati for the petitioner submitted that the petitioner trust has received recognition from NCTE for running B.Ed courses with intake capacity of 100 students. Once such recognition is granted, the respondent no.3 University cannot stop allotment of students without valid reasons. Non-allotment of students would amount to cancellation of recognition which can be done only by NCTE that too after following due process.

4.8. He further contended that the reports sought to be relied upon by respondent no.3 contain no material and the same were prepared unilaterally without any

participation from the petitioner.

4.9. Learned advocate Shri Nanavati for the petitioner placed reliance on the provisions contained in NCTE Act to canvass that it is only NCTE which can cancel the recognition already granted to the petitioner.

4.10. Reliance was placed on the decision of learned Single Judge of this Court in the case of Suvidha Education Trust Through Vice President vs. State of Gujarat and Anr. dated 20th July, 2005 rendered in Special Civil Application No.12168 of 2005 wherein the learned Single Judge of this Court held that the University had no power, jurisdiction and authority to withdraw the recognition granted to the institution by the NCTE.

4.11. Reliance was also placed on the decision of learned Single Judge of this Court in the case of Gita Trust Through Secretary vs. State of Gujarat through Secretary and Ors. dated 20/9/2005 rendered in Special Civil Application No. 13675/05 wherein the

learned Single Judge came to the conclusion that in view of the provisions contained in provisions 14 and 17 of the said Act it is only the NCTE who can take action against an institution for de-recognition after giving an opportunity of making a representation and such action can be taken by the Regional Committee as provided u/s. 17 of the said Act.

4.12. Reliance was also placed on the decision of learned Single Judge of this Court in the case of Shree Junagadh Kblavani Mandal vs. State of Gujarat and Ors. dated 7/9/2005 rendered in Special Civil Application No.17244/05 for the same purpose.

4.13. Reliance was also placed on the decision of the Hon'ble Supreme Court in the case of State of Maharashtra vs. Sant Dnyasneshwar Shikshan Shastra Mahavidyalaya & Ors. reported in JT 2006(4) SC 201 wherein the Hon'ble Supreme Court was pleased to hold that the question of granting recognition has to be decided by NCTE and once such recognition is granted the State would not be justified in refusing to grant

NOC.

4.14. Reliance was placed on the decision of learned Single Judge of this Court dated 16/3/2005 rendered in the case of Shree Gram Sarvajani Education Trust-Janda vs. State of Gujarat & Ors. in Special Civil Application No.9251/04 wherein the learned Single Judge came to the conclusion that grant or refusal of NOC by the State Government is not conclusive or binding and the NCTE has to decide the question of recognition independently.

5. On the other hand learned advocate Shri Thacker for the University opposed the petition contending that the petitioner has committed irregularities in running of the college. This has come on record through the reports of the committee constituted by the University. If students are allotted, their future would be jeopardized. The University as the trustee of the students, therefore, found it inappropriate to grant allotment.

6. Learned Asst. Government Pleader Shri Gori for

the State Government confined his submission to contest the allegations of malafides and suggested that the State has no role to play so far as the decision of the University is concerned and the allegations of malafides are not borne out from the record.

7. Having heard learned advocates appearing for the parties following aspects of the matter emerge.

1. The petitioner enjoys a valid recognition granted by NCTE under the provisions of the said Act. At no stage any steps have been taken seeking to cancel such a recognition. Currently, therefore, the recognition granted to the petitioner continues in force.
2. In order to cancel such recognition, provisions have been made in the said Act and further remedies available to the person aggrieved.
3. The University has decided not to allot students to the B.Ed college run by the

petitioner trust though the recognition is in force.

4. Such decision is based on two reports first report is dated 11/2/2006 and the second report is dated 5/7/2006.

5. The petitioner is correct in contending that in the communication dated 27th April, 2006 the Registrar of respondent no.3 University indicated that a committee of three members is being set up to inquire into the allegations of irregularities whereas the first report was already submitted on 11/2/2005. No mention of this report is made in the communication of the Vice Chancellor dated 24/4/2006.

6. In report dated 11/2/2006 there is absolutely no material which would permit the respondent no.3 to come to a definite conclusion about the allegations of irregularities of the petitioner trust. The entire report is based of no material. The report suggested that there are some newspaper articles suggesting mis-deeds of

the trustee of the trust. Surely the action of the University cannot be founded on newspaper reports. The report also states that on account of fear neither the teacher nor the students come forward for making statements. The report also states that the members during their personal visit carried a feeling that under such atmosphere students would not be in a position to pursue their studies properly. The report also states that many students wanted to leave the institution mid-way but were prevented from doing so by the trust.

There is absolutely no material on record to permit the committee to draw such conclusion. The report itself records that neither the teachers nor the students have come forward for giving their statements. The sole basis sought to be relied upon is the newspaper article. The committee records that during the personal visit members carried a feeling that the atmosphere of the college is not proper.

What was the basis for forming such a feeling is not indicated. The observation that many students wanted to leave the course but were prevented to do so was also based on no material. Thus the entire report of the committee dated 11/2/2006 is based on *ipsedixit*. Additionally, this report was never brought to the notice of the petitioner even when the petitioner made representations and the Registrar of the University replied to the petitioner on 27th April, 2006.

7. The subsequent report dated 5/7/2006 also is based on virtually no material. Though the report records certain alleged irregularities, it is not stated on what basis such conclusions have been drawn. Additionally, neither before preparing the report dated 11/2/2006 nor before preparing report dated 5/7/2006, the petitioner trust was involved in the inquiry sought to be conducted by respondent no.3 University. Such reports prepared unilaterally are

sought to be pressed in service for denying allotment of students to the petitioner.

8. From the above discussions, it can be seen that respondent no.3 University is seeking to suspend the process of allotment of students to the petitioner trust on the basis of reports prepared without participation of the petitioner and without giving any opportunity to the petitioner to submit its case. Additionally, I also find that there is no material placed on record to substantiate the conclusions drawn in such reports.

9. I also find that primarily it is the task of NCTE to cancel the recognition of the petitioner for running a B.Ed college, if it is found that the petitioner has committed any irregularities which would warrant such an action. Respondent no.3 University on its own cannot dis-continue allotment of students direct effect of which action would be to cancel or atleast temporarily suspend the recognition of the petitioner.

10. Primacy of NCTE in recognizing such institutions has been upheld by Hon'ble Supreme Court in the case of State of Maharashtra vs. Sant Dnyasneshwar Shikshan Shashtra Mahavidyalaya & Ors.(supra). Decision of learned Single Judges of this Court referred to herein above also accept this principle.

11. Considering all these aspects of the matter, I find that respondent no.3 erred in not granting allotment of students to the petitioner college for the academic year 2006-2007 in its B.Ed college. It is not in dispute that large number of student candidates desiring to pursue the said course are still waiting for admissions. Though it is stated that the admission process in other institution was completed on 13th June, 2006, I do not find that the time gap is so much that the petitioner should be denied relief in this petition.

12. In the result the petition is allowed. Respondent no.3 is directed to allot students in the B.Ed college run by the petitioner according to its intake capacity and in proportion of the quota. Such

allotment shall be made within a period of one week from the date of receipt of a copy of this order. This allotment shall be made from amongst the remaining students who have not yet got admission in any of the B.Ed colleges. To comply with these directions it will not be necessary to reopen the admissions already granted or to hold fresh counselling of students who have already secured admissions in other institutions.

13. This Court has accepted the petition of the petitioner on the wider legal aspects and I find that it would be unsafe to permit the University to suspend or effectively cancel the recognition of the institution by unilaterally deciding not to allot students without any valid basis. Accepting the stand of the University would lead to a situation whereby such powers can be mis-used. This is however not to suggest that this Court has given a clean chit to the petitioner if there are any irregularities or large scale mal-practices. It is always open to the authorities to inquire into the same and come to a just conclusion in this regard in accordance with

law. It would be open for respondent no.3 to bring to the notice of NCTE all irregularities or illegalities that may have come to the notice of the University. NCTE shall examine the same and proceed further as found necessary. Again this is not to suggest that this Court has expressed any opinion on such allegations.

14. With these observations and directions, the petition is disposed of. Rule is made absolute. No costs.

15. In view of the disposal of the main petition, Civil Application No. 6850 of 2006 does not survive and is hereby disposed of.

(Akil Kureshi, J.)

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